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No. 72-5

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

HAROLD E. KOHN, Trustee, *et al.*,

Petitioners,

—against—

AMERICAN METAL CLIMAX, INC. and
ROAN SELECTION TRUST LIMITED,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT OF RESPONDENTS

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Respondents do not oppose this petition that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered March 31, 1972. Moreover, the respondents herein have themselves filed a petition for a writ of certiorari to review the same judgment. (No. 72-132)

We are compelled to point out, however, that the statement of the case in plaintiff's petition is erroneous in a number of significant respects.

Plaintiff's petition suggests that the foreign proceeding which he seeks to avoid was a perfunctory one instituted only after a United States District Court had entered a preliminary injunction which had been stayed by the Court of Appeals (Pet. 10), that the issues were resolved by the High Court of Zambia on the basis of only three hours'

consideration (Pet. 11) and that Zambia, a member of the British Commonwealth, is a nation "whose legal system differs from our own." (Pet. 17)

As was set forth in detail by Judge Adams in his dissenting opinion below (App. 83-93), the Zambian proceeding paralleled in most respects an American corporate reorganization and the judgment was entered by a court of competent jurisdiction, on due notice, after ample opportunity for deliberation. In fact, the High Court of Zambia had before it the entire record of the proceedings in the District Court.

Further, as Judge Adams noted, the Zambian judgment was entered by an eminent English-trained judge pursuant to a body of Zambian law which incorporates the English corporate law in force prior to Zambian independence in 1964. (App. 90-91)

We respectfully refer the Court to our own petition. We submit that the Court of Appeals correctly decided the question raised by plaintiff's petition, but erred as to other important issues presented by our petition.

Respectfully submitted,

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July 24, 1972

CERTIORARI DENIED